

**A IN THE UNITED STATES DISTRICT COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION**

BOARD OF TRUSTEES of the PIPE FITTERS)	
RETIREMENT FUND, LOCAL 597;)	
BOARD OF TRUSTEES of the PIPE FITTERS)	CIVIL ACTION
WELFARE FUND, LOCAL 597;)	
BOARD OF TRUSTEES of the PIPE FITTERS)	
TRAINING FUND, LOCAL 597;)	NO.: 11-CV-1873
BOARD OF TRUSTEES of the CHICAGO AREA)	
MECHANICAL CONTRACTING INDUSTRY)	
IMPROVEMENT TRUST;)	JUDGE: HART
THE PIPE FITTERS' ASSOCIATION,)	
LOCAL 597 U.A.; BOARD OF TRUSTEES)	
of the PIPE FITTERS' INDIVIDUAL)	MAGISTRATE
ACCOUNT and 401(K) PLAN; and)	JUDGE: NOLAN
BOARD OF TRUSTEES of the PIPE FITTING)	
COUNCIL OF GREATER CHICAGO,)	
)	
Plaintiffs,)	
)	
vs.)	
)	
COMPLETE VALVE REPAIR SERVICES, INC.,)	
an Indiana Corporation; GNOME INDUSTRIES)	
INC., an Indiana Corporation; VIRGIL CLARY,)	
an Individual; and JACOB WILCOX, an)	
Individual;)	
)	
Defendants.)	

MOTION TO REINSTATE LAWSUIT AND FOR JUDGMENT

NOW COME the Plaintiffs, the Board of Trustees of the Pipe Fitters Retirement Fund, Local 597, *et al.*, by and through their attorneys, Johnson & Krol, LLC, and pursuant to this Court's Order of July 6, 2011, move to Reinstate the Lawsuit and for Judgment against the above captioned Defendants and in support state as follows:

1. Plaintiffs are the Board of Trustees of the Pipe Fitters Retirement Fund, Local 597, the Board of Trustees of the Pipe Fitters Welfare Fund, Local 597, the Board of Trustees of the

Pipe Fitters Training Fund, Local 597, the Board of Trustees of the Chicago Area Mechanical Contracting Industry Improvement Trust, the Board of Trustees of the Pipe Fitters' Individual Account and 401(k) Plan and the Board of Trustees of the Pipe Fitting Council of Greater Chicago (collectively "TRUST FUNDS"), and Pipe Fitters' Association, Local 597 U.A ("UNION").

2. Defendants are Complete Valve Repair Services, Inc. ("COMPLETE"), Gnome Industries, Inc. ("GNOME"), Virgil Clary ("CLARY") and Jacob Wilcox ("WILCOX").
3. On or about March 17, 2011, Plaintiffs filed their Complaint in the above-captioned matter.
4. On or about June 20, 2011, the Plaintiffs and Defendants entered into a Secured Settlement Agreement that requires the Defendants to submit an initial payment of \$5,019.27, followed by twelve (12) monthly payments of \$3,000.00, twelve (12) monthly payments of \$3,500.00, eight (8) monthly payments of \$7,829.45 and four (4) monthly payments of \$8,882.35 to pay off the principal balance of \$168,099.29 at an interest rate of 6.0%. (A copy of the Secured Settlement Agreement is attached as Exhibit 1).
5. The terms of the Secured Settlement Agreement provide that in the event COMPLETE VALVE, WILCOX, CLARY and GNOME default on any of their obligations under the terms of the Secured Settlement Agreement:
 - A.) All remaining payments will be accelerated and become immediately due and payable;
 - B.) COMPLETE VALVE, WILCOX, CLARY and GNOME hereby confess judgment for any and all unpaid amounts;
 - C.) An additional liquidated damages charge of 10% of all unpaid amounts shall become due and payable by COMPLETE VALVE, WILCOX, CLARY and GNOME; and
 - D.) In the event the TRUST FUNDS and/or UNION are required to engage an attorney to collect any amounts due under this Agreement, COMPLETE VALVE, WILCOX, CLARY and GNOME shall be liable for all reasonable attorney's fees and costs incurred by the TRUST FUNDS and UNION. (Exhibit 1).

6. The Secured Settlement Agreement further states that Defendants CLARY and WILCOX shall be individually liable for the obligations of COMPLETE and GNOME under the terms of the Agreement, including the submission of ongoing Contributions for all months throughout the duration of the Agreement. (Exhibit 1).
7. On June 22, 2011, the Plaintiffs moved to dismiss the lawsuit pursuant to the Parties' Settlement and for Entry of Order for Court to Retain Jurisdiction to Enforce the terms of the Parties' Secured Settlement Agreement.
8. On July 6, 2011, the Court entered an Order Dismissing the Lawsuit and Retaining Jurisdiction to Enforce the Terms of the Parties' Secured Settlement Agreement. (A copy of the Court's Order dismissing the matter and retaining jurisdiction to enforce the Secured Settlement Agreement is attached as Exhibit 2).
9. The Defendants have failed to submit their Secured Settlement payment for the month of December 2011 and their contribution payment for the month of November 2011. (An Affidavit of Mike Maloney is attached as Exhibit 3).
10. Defendants' failure to pay the November 2011 contributions and December 2011 Secured Settlement payment is a direct default of the terms of the Secured Settlement Agreement and this Court's Order of July 6, 2011. (Exhibits 1 and 2).
11. The Secured Settlement Agreement states that upon default all remaining payments will be accelerated and become immediately due and payable. (Exhibit 1).
12. The Secured Settlement Agreement further states that upon default Defendants COMPLETE VALVE, WILCOX, CLARY and GNOME confess judgment for any and all unpaid amounts. (Exhibit 1).
13. The Plaintiffs seek to reinstate the law suit and for judgment against Defendants

COMPLETE VALVE, WILCOX, CLARY and GNOME, jointly and severally, pursuant to the Confession of Judgment.

14. Defendants currently owe Plaintiffs \$151,098.40 in unpaid principal pursuant to the breached Secured Settlement Agreement. (Exhibit 3).
15. The Defendants owe the Plaintiffs \$23,848.83 in unpaid liquidated damages as a result of the breached Secured Settlement Agreement and for untimely contribution payment during the time period of May through November 2011. (Exhibit 3).
16. Defendants have failed to submit their Contribution Report and payment for the month of November 2011. (Exhibit 3).
17. Defendants currently owe Plaintiffs \$2,800.85 in unpaid attorney's fees and costs pursuant to the Collective Bargaining Agreement, Trust Agreements, Secured Settlement Agreement and 29 U.S.C. §1132(g)(2)(D). (Affidavit of Attorney's Fees is attached as Exhibit 4).

WHEREFORE, Plaintiffs request the following:

- A. That the Court reinstate the matter against COMPLETE VALVE, WILCOX, CLARY and GNOME pursuant to its Order of July 6, 2011;
- B. That Judgment be entered in favor of Plaintiffs and against Defendants COMPLETE VALVE, WILCOX, CLARY and GNOME, jointly and severally, in the amount \$151,098.40 for unpaid principal pursuant to the breached Secured Settlement Agreement;
- C. That Judgment be entered in favor of Plaintiffs and against Defendants COMPLETE VALVE, WILCOX, CLARY and GNOME, jointly and severally, in the amount of \$23,848.83 for unpaid liquidated damages;
- D. That Defendants COMPLETE VALVE, WILCOX, CLARY and GNOME be ordered to

submit their Contribution Report for the month of November 2011 to Plaintiffs' counsel within five (5) days from the date of service of the Order;

- E. That Judgment be entered in favor of Plaintiffs and against Defendants COMPLETE VALVE, WILCOX, CLARY and GNOME, jointly and severally, for all unpaid contributions, liquidated damages and interest owed for the month of November 2011;
- F. That Plaintiffs be granted leave to move to amend the Judgment once the Contribution Report for November 2011 has been submitted and the total aggregate liability of Defendants can be determined.
- G. That judgment be entered in favor of Plaintiffs and against Defendants COMPLETE VALVE, WILCOX, CLARY and GNOME, jointly and severally, in the amount of \$2,800.85 for all reasonable attorney's fees and costs incurred by the Plaintiffs pursuant to the Collective Bargaining Agreement, Trust Agreements, Secured Settlement Agreement and 29 U.S.C. §1132(g)(2)(D);
- H. That Plaintiffs have such other relief and further relief as the Court may deem just and equitable all at Defendants' cost, pursuant to 29 U.S.C. §1132(g)(2)(E).

Respectfully submitted,

**TRUSTEES OF THE PIPE FITTERS
RETIREMENT FUND, LOCAL 597, et al.,**

By: /s/ William P. Callinan – 6292500
One of Plaintiffs' Attorneys

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